



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2011-1173]

RIN 1625-AA00

Safety Zones; TriMet Bridge Project, Willamette River,
Portland, OR

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing safety zones encompassing the work trestles and construction cranes involved in the construction of the TriMet Bridge on the Willamette River, in Portland, OR. This action is necessary to ensure the safety of recreational vessels and commercial vessels transiting in close proximity to cranes and overhead work associated with this construction project. These safety zones replace the prior safety zones established for the TriMet Bridge construction site and are more focused in nature than the previous safety zone. During the enforcement period, all vessels will be required to transit the area at a safe distance from the work being conducted.

DATES: This rule is effective from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] until October 31, 2014.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG-2011-1173 and are available online by going to <http://www.regulations.gov>, inserting USCG-2011-1173 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail ENS Ian McPhillips, Waterways Management Division, Coast Guard MSU Portland; telephone 503-240-9319, e-mail Ian.P.McPhillips@uscg.mil. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule

without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest".

Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because to do so would be impracticable, since bridge construction is already underway and the safety zone continues to be immediately necessary to help ensure the safety of recreational and commercial vessels transiting in close proximity to cranes, barges, and temporary structures associated with this construction project.

Under 5 U.S.C. 553(d)(1), the Coast Guard finds that this rule may be made effective less than 30 days after publication in the Federal Register because it relieves restrictions imposed by the prior safety zones, which were broader in scope. Furthermore, under 553(d)(3), we find that any delay in the effective date of this rule would constitute a danger to the vessels in this area as well as the structures associated with the construction project.

Background and Purpose

Currently, a safety zone exists around the TriMet Bridge Project on the Willamette River. This temporary rule is being published to modify the safety zone at issue, so that the exclusionary zone does not extend from riverbank to riverbank in this section of the river, and also to clarify that the safety zones are only temporary. The new zones will require vessels passing through the area to remain a distance of 100 feet in all directions away from the work trestles and 140 feet in all directions from the cranes. To ensure the safety of construction crews on the barges, temporary structures, and cranes, two safety zones on each side of the river are being established to require vessels in the vicinity of the construction area to remain outside of the two designated safety zones. Additionally, this will ensure that the vessels operating in the vicinity of the designated areas will not be in any dangerous areas.

Discussion of Rule

The two safety zones created by this rule cover all waters of the Willamette River; however, the establishment of the safety zones does not close this section of the Willamette River to vessels desiring to pass through the area when transiting up-bound or down-bound. The section of

the Willamette River between the safety zones will remain open for vessel transits throughout the entirety of the project unless otherwise specified by the Captain of the Port Columbia River. Vessels passing through the area will be required to remain a distance of 100 feet in all directions away from the work trestles and 140 feet in all directions of the cranes. The safety zones will ensure the safety of all vessels and crew that are working and transiting in the construction areas. Other maritime users, such as dragon boats, kayaks, and canoes, will also be able to transit through the open section.

Regulatory Analyses

The Coast Guard developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. The Coast Guard has made this determination based on the fact that the safety zones created by this

rule will not significantly affect the maritime public because vessels may still transit in the vicinity of the safety zones.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), The Coast Guard has considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities some of which may be small entities: the owners and operators of vessels intending to operate in the area covered by the safety zones. The safety zones will not have a significant economic impact on a substantial number of small entities because the area can still be used to transit through this section of the river. Other maritime users, such as dragon boats, kayaks, and canoes, will be able to transit through the open section.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), The Coast Guard offers to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

Federalism

A rule has implications for Federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either

preempt State law or impose a substantial direct cost of compliance on them. The Coast Guard has analyzed this rule under that Order and has determined that it does not have implications for Federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a state, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce

burden.

Protection of Children

The Coast Guard has analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

Energy Effects

The Coast Guard has analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The Coast Guard has determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order

12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

The Coast Guard has analyzed this rule under

Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2-1, paragraph (34)(g), of the Instruction. This rule involves the establishment of a safety zone. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under ADDRESSES.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and Recordkeeping Requirements, Security Measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165-REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department

of Homeland Security Delegation No. 0170.1.

2. Remove § 165.1338.

3. Add § 165.T13-209 to read as follows:

§ 165.T13-209 Safety Zones; TriMet Bridge Project,
Willamette River; Portland, OR.

(a) Location. The following are safety zones: all waters within 100 feet of work trestles, in all directions, and within 140 feet, in all directions, of the TriMet bridge construction cranes.

(b) Regulation. In accordance with the general regulations in 33 CFR Part 165, Subpart C, no vessel operator may enter or remain in the safety zones without the permission of the Captain of the Port or Designated Representative. The Captain of the Port may be assisted by other Federal, state, or local agencies with the enforcement of the safety zones.

(c) Authorization. All vessel operators who desire to enter the safety zones must obtain permission from the Captain of the Port or Designated Representative by contacting the on-scene patrol craft. Vessel operators granted permission to enter the zones will be escorted by the on-scene patrol craft until they are outside of the safety zones.

(d) Enforcement Period. The safety zones detailed in paragraph (a) of this section will be enforced from 12:01 a.m. on July 1, 2011 through 11:59 p.m. on October 30, 2014.

Dated: April 6, 2012 B. C. Jones
Captain, U. S. Coast Guard
Captain of the Port, Columbia
River

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